IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.848 to 877 of 1998

State by The Superintendent
Regulated Market,
Madurantakam .. Appellant/Complainant in all above Crl.As.

vs.

1.A.Viswanathan .. Respondent/accused in Crl.A.No.848/1998
2.D.Chittibabu .. Respondent/accused in Crl.A.No.849/1998
3.K.S.Gnanasekaran .. Respondent/accused in Crl.A.No.850/1998
4.K.Arunagiri .. Respondent/accused in Crl.A.No.851/1998
5.E.Mani .. Respondent/accused in Crl.A.No.852/1998
6.E.Subramani .. Respondent/accused in Crl.A.No.853/1998
7.R.Sasikumar .. Respondent/accused in Crl.A.No.854/1998
8.Sundaramurthi .. Respondent/accused in Crl.A.No.855/1998
9.P.Gunasekaran .. Respondent/accused in Crl.A.No.856/1998
10.S.J.Kirubanandam .. Respondent/accused in Crl.A.No.857/1998
11.R.Srinivasan .. Respondent/accused in Crl.A.No.858/1998
12.S.Krishnaraj .. Respondent/accused in Crl.A.No.859/1998
13.S.Karunakaran .. Respondent/accused in Crl.A.No.860/1998
14.G.Sankar .. Respondent/accused in Crl.A.No.861/1998
15.K.Rajamani .. Respondent/accused in Crl.A.No.862/1998
16.P.Ganasekaran .. Respondent/accused in Crl.A.No.863/1998
17.K.Raman .. Respondent/accused in Crl.A.No.864/1998
18.M.Srinivasan .. Respondent/accused in Crl.A.No.865/1998
19.A.Ganesa Chettiar.. Respondent/accused in Crl.A.No.866/1998
20.K.S.Senthilvelan .. Respondent/accused in Crl.A.No.867/1998
21.A.Venugopal .. Respondent/accused in Crl.A.No.868/1998
22.A.Kothandaraman .. Respondent/accused in Crl.A.No.869/1998
23.K.Sivakumar .. Respondent/accused in Crl.A.No.870/1998
24.S.Karunakaran .. Respondent/accused in Crl.A.No.871/1998
25.A.Viswanathan .. Respondent/accused in Crl.A.No.872/1998
26.K.Saroja .. Respondent/accused in Crl.A.No.873/1998
27.E.Subramani .. Respondent/accused in Crl.A.No.874/1998
28.M.Srinivasan .. Respondent/accused in Crl.A.No.875/1998
29.M.Bharani .. Respondent/accused in Crl.A.No.876/1998
30.K.Raman .. Respondent/accused in Crl.A.No.877/1998

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Prayer: These criminal appeals have been filed against the judgments, dated 04.02.1998, in C.C.No.303 of 1994 and C.C.Nos.305 to 328 of 1994 and C.C.No.330 to 334 of 1994 respectively on the file of the Judicial Magistrate, Madurantakam.

For Appellant : Mr.V.R.Balasubramanian, (in all Crl.As)
Addl. Public Prosecutor.
For Respondent : Mrs.P.V.Rajeswari (in all Crl.As)

COMMON JUDGMENT

These appeals have been preferred against the judgment in C.C.No.303/1994 and C.C.Nos.305 to 328 of 1994 and C.C.No.330 to 334 of 1994 respectively on the file of the Judicial Magistrate, Madurantakam. The complaint against the accused in the above said cases were preferred by the Superintendent of regulation sale center, Madurandhagam, under Section 8(8) & (9), 20(1) of the Tamilnadu Agricultural produce marketing (regulation) Act 1987 (hereinafter referred to as "the Act") and Rules 32 (1), (2), 33(1), (4) and under Rule 48(1)(B) of the Tamilnadu Agricultural produce marketing (regulation) Rules 1991 (hereinafter referred to as "the Rules"), against all the accused individually under the above mentioned calendar cases.

2. All the accused have been charged to the effect that the accused have obtained licence for the year 1993-1994 under Section 8(1) of the Act to procure and sell paddy and to indulge in the said business. As per G.O.Ms.No.3147 Agricultural Department, dated 27.12.1972, paddy, as per the above said Act, was notified as a notified agricultural produce for the entire Chengalpet District. As per the Section 6(2) of the Act, G.O.Ms.No.4046 dated 03.10.1974 has been issued declaring a part of the land in and around the above said regulatory marketing place as notified marketing place. As per Section 8(8) of the Act, every businessmen who was given licence under Section 8(1) of the Act, as per the bylaws of the marketing committee has to file form-9 showing the details regarding articles purchased, articles sold and the balance sheet containing the statement of accounts, to the head office of the marketing committee on or before 10th of every month and the details mentioned in the statement must be born with relevant documents and acknowledgment is to be obtained from the marketing committee by having submitted the statements as per Section 8(8) of the Act and Rule 32(1) of the Rules. As per Section 24(1) of the Act and Rules 33(1) of the Rules, for the products sold as shown in the statement, for the value of Rs.100/- worth of the product sold Rs.1/- is to be remitted with the marketing committee. As per Section 33(4) of the Act, within one week from the date of sale the agency shall remit the charges as mentioned above to the marketing committee. The accused has failed to submit the monthly statement as provided under Section 8(9) of the Act r/w Rule 32 of the Rules for the period from 01.03.1993 to

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31.05.1993. As per Section 24(1) and Rule 33 so far the accused have not paid the charges due to the marketing committee inspite of the notice, dated 11.06.1993, issued by the Superintendent of the market regulation committee, Madurantagam. The accused have not paid the charges due to the marketing committee. The accused have purposely failed to submit the statement of accounts and also failed to pay the charges due to the marketing society. Sanction order has been obtained against the accused as per Section 58(2) of the Act from the Agricultural Marketing Director authorising the Superintendent of the marketing regulation committee, Madurantagam, to prosecute the accused under his letter No.27142/93 dated 26.11.1993. The Superintendent as complainant filed the complaint against the accused under Section 8(8), (9), 20(1) of the Act and Rule 32(1), (2), 33(1), (4) of the Rules.

3. According to the complainant the accused are liable to be punished under Section 48(1) of the Act. The complaint was taken on file by the Judicial Magistrate after examining the complainant. On appearance of the accused copies under Section 207 of Cr.P.C, were furnished to the accused. When questioned, the accused in all the above cases pleaded not guilty.

4. The Superintendent of the Tamilnadu Agricultural Produce Marketing committee, was examined as P.W.1 in all the above cases. According to him, as per G.O.No.1546 dated 03.10.1974, issued by the Tamilnadu Agricultural Department in the year 1987 in the entire Chengalpet District, the paddy was declared as a notified commodity and as per Section 8(1) of the Act, paddy can be sold only after obtaining necessary licence and as per the said GO, paddy can be sold only by the licence holder under Section 8(1) of the Act within 16 kms radius from the Madurantagam regulation market committee building. The accused, according to the complainant, have applied for licence for the period 1993-1994, but the accused have failed to submit any statement of accounts for the business transaction for the period from 01.03.1993 to 31.05.1993 and also failed to remit Rs.1/- for the commodity value of Rs.100/- sold in the market.

5. Ex.P.1 (in all the above cases) is the application form for licence for sale of paddy and Ex.P.2(in all the above cases) is the notice issued by the complainant to the accused. Ex.P.3(in all the above cases) is the final notice issued by the complainant to the accused demanding the accused to file the statement of accounts and the charges due to the market committee. Ex.P.4(in all the above cases) is the acknowledgment for Ex.B.3(in all the above cases) served on the accused. Ex.P.6 (in all the above cases) is the register. Ex.P.7 (in all the above cases) is the circular issued by the Secretary of the Agricultural Department issued to all the licence traders of paddy in their district and Ex.P.8 (in all the above cases) is the acknowledgment.

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6. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C, the accused have denied their complicity with the crime. The accused have examined D1 and D2 on their side. D1-Rajendran in his evidence has stated that the accused is having a rice mill and every day he used to get 5 to 10 kgs of paddy from the rice mill. D2-Radhakrishnan, would state that he is having two rice mill at Karungulli and one rice mill at Vallikulam village in Chegalpet Taluk and that he has submitted relevant records along with his statement of accounts. The statement of accounts for the period from 01.11.1995 to 31.03.1996 to the rice mill at Vallipuram and that Ex.D.1 is the receipt for having paid market charges dated 17.5.1996. After going through the available evidence the learned Judicial Magistrate after considering the documentary and oral evidence has acquitted the accused in all the above cases holding that the charges levelled against the accused in all the above cases have not been proved by the complainant beyond any reasonable doubt. Aggrieved by the findings of the learned Judicial Magistrate, these appeals have been preferred by the state.

7. Now the point for determination in these appeals is that whether the judgment of the trial Court is biased and perverse requiring any interference from this Court in the findings of acquittal against the accused in all the above mentioned cases?

8.The point:-

8(a) I have heard Thiru.V.R.Balasubramanian, Additional Public Prosecutor for the appellant-state and Mrs.P.V.Rajeswari for the respondents/accused in all the above cases and considered their rival submissions. The learned Additional Public Prosecutor would submit that the trial Court in its reasoning for acquittal of the accused has observed that under Section 56(1) of the Act, the complaint should be preferred only in writing, but in these cases the complainant has preferred a type-written complaint. The sanction order under Ex.P.9 (in all the above cases) has not been issued individually to the accused but under a single common order, sanction for prosecution was issued against all the accused. Licence given to the accused in Form No.3 shows that accused are dealer in paddy. No action was taken against the licensee dealer/accused by the marketing committee. As per Rule 24(2) of the Rules, the prosecution agency has to produce the copy of the complaint, but only xerox copy has been produced. Ex.P.2 & 3 were sent to the accused, but those documents do not contain serial Nos. Ex.P.9 shows that G.O.Ms.No.3147 dated 29.12.1972, but date of GO was wrongly been mentioned as 27.12.1972. Some of the applications do not contain the signature of the accused viz., Ex.P.1 in C.A.No.848/98, Ex.P.1 in C.A.853/98, Ex.P.1 in C.A.872/98 and Ex.P.1 in C.A.874/98.

8(b) the learned Additional Public Prosecutor would contend that the above reasoning stated by the trial Court for acquitting the accused in the above cases are perverse in nature. In support of this contention,

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the learned Additional Public Prosecutor would contend that Ex.P.5-sanction order passed by the Director of the Agricultural Department under Section 58(2) of the Act is not valid because the accused were not supplied with individual sanction order. Since all the accused are charged for the offence under Section 8(8), (9), 20(1) of the Act and under Rule 32(1), (2), 33(1)(4) and under Section 48(1) of the Act, there is no necessity to issue a separate sanction order for each of the accused. The learned Additional Public Prosecutor would further contend that Ex.P.5 is invalid because reference No. and date were missing. But the reference No. and also the date were given in Ex.P.5, but only in the endorsement by the Special Officer to the Superintendent the reference No. is missing and on that ground it cannot be said that Ex.P.5-sanction order is invalid.

8(c) The learned Additional Public Prosecutor would further contend that even though in Ex.P.1 relating to C.A.Nos.848, 853, 872 and 874 of 1998, the accused has not signed in the application form for licence but their representatives alone have signed. But so far as this point is concerned, the person who has signed on behalf of the applicant was not examined on the side of the complainant to show that only under the instruction and authorisation of the applicant, he has signed for the applicant in Ex.P.1-application form. I am of the view that an application for licence for dealership of sale of paddy, the applicant alone shall sign in the application form and no one else.

8(d) The learned Additional Public Prosecutor would further contend that as per Rule 24(2) of the Rules for the application for grant of renewal or duplicate of a licence under this rule shall be accompanied by a copy of receipt for payment of fee specified in rule 27 and sent to the market committee through the concerned Head of market and the findings of the trial Court that only a xerox copy of the receipt for the payment of licence fee cannot be taken as a copy of receipt for the payment of the prescribed fee, is unsustainable.

8(e) I have given deep consideration for the submissions made by the learned Additional Public Prosecutor. But his submissions cannot be accepted for the following reasons:-

It is the case of the prosecution that the accused have violated the provisions contemplated under the licence issued under Ex.P.1 application for dealership of paddy in the notified area in Chengalpet District. If there is any violation of licence issued by the accused then as per Rule 30 of the Rules, Marketing Committee has every right to suspend or cancel the licence. Rule 30 of the Tamilnadu Agricultural Produce Marketing regulations Rules 1991 runs as follows:-

> " The Market committee may, if it is satisfied that a licensee has violated any of the conditions or provisions, of the Act, Rules or by-law framed thereunder, suspend or cancel the licence granted to him by recording the reasons therefor.

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Provided that no licence shall be cancelled or suspended without giving an opportunity to the licensee to take his representation in writing against the proposed cancellation or suspension of the licence"

It is pertinent to note in all the above cases the licence to the above said accused were not at all produced by the complainant. P.W.1 in his evidence has stated that the complaint has been preferred since the accused have violated the specifications mentioned in the licence. But the licence was not produced by the complainant in all the above cases. The non-examination of the persons who have signed in Ex.P.1 in C.A.Nos.848, 853, 872 and 874 of 1998, is also fatal to the case of the complainant in all the above cases to prove whether they are authorised signatories of the applicant in Ex.P.1 in all the above cases. The non-production of the licence in the above said cases cuts at the root of the complaint preferred in all the above cases. I do not find any illegality or infirmity in the findings of the learned Judicial Magistrate, Madurantagam in C.C.No.303/1994 and C.C.Nos.305 to 328 of 1994 and C.C.No.330 to 334 of 1994.

9. In the result, the appeals are dismissed confirming the judgements in C.C.No.303 of 1994 and C.C.Nos.305 to 328 of 1994 and C.C.No.330 to 334 of 1994, on the file of the Judicial Magistrate, Madurantakam.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1.The Judicial Magistrate, Madurantagam.
2.The Chief Judicial Magistrate, Kanchipuram.
3.The Superintendent, Regulate Market, Madurantagam
4.The Public Prosecutor, High Court, Madras.

Crl.A.No.848 to 877 of 1998

MDR(CO)
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